

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

JOSEPH KOLODZIEJ, et al.,

Plaintiffs,

CASE NO. 1:06-cv-820

v

HON. JANET T. NEFF

KRISTYN GOSCIAK, et al.,

Defendants.

**ORDER AND JUDGMENT ADOPTING MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION**

The Court has reviewed the Report and Recommendation (Dkt 38) filed by the United States Magistrate Judge in this action. The Report and Recommendation was duly served on the parties. No objections have been filed.

ACCORDINGLY, the Report and Recommendation is hereby adopted as the Opinion of the Court.

THEREFORE, IT IS ORDERED that:

A. The Motion To Dismiss Pursuant To FRCP 12(b)(1), (2), and (3) filed by Defendants Hunt Real Estate Era and Donna Starnes (Dkt 9):

The motion to dismiss all claims of minor N.J.K. is GRANTED. The request to dismiss the claims of Plaintiff Tamara Kolodziej is DENIED, without prejudice.

The motion challenging venue is GRANTED; this action is TRANSFERRED to the Western District of New York.

The motion to dismiss for lack of *in personam* jurisdiction is DENIED as moot, in light of the transfer to a district having personal jurisdiction over the moving defendants.

B. The Motion To Dismiss Pursuant To Federal Rule of Civil Procedure 12(b)(2) For Lack Of Personal Jurisdiction Or, In The Alternative, Pursuant To Federal Rule Of Civil Procedure 12(b)(3) For Improper Venue filed by Defendant Kristyn Gosciak (Dkt 10):

The objection to proper venue by Defendant Kristyn Gosciak is SUSTAINED; however, the matter will not be dismissed but TRANSFERRED to the Western District of New York.

The motion to dismiss for lack of personal jurisdiction is DENIED, in light of the transfer to the Western District of New York.

C. The Motion To Dismiss Pursuant To Federal Rule Of Civil Procedures 12(b)(2) For Lack Of Personal Jurisdiction Or, In The Alternative, Pursuant To Federal Rule Of Civil Procedure 12(b)(3) For Improper Venue filed by Defendant Thomas Deuschle (Dkt 11):

The objection by Defendant Thomas Deuschle to proper venue is SUSTAINED, and the case is TRANSFERRED to the Western District of New York in lieu of dismissal. Defendant's request to dismiss for lack of *in personam* jurisdiction is DENIED in light of the transfer.

D. The Motion To Dismiss Pursuant To Fed. R. Civ. P. 12(b)(1)(3) And (6) Or, In The Alternative, For Interpleader Under 28 U.S.C. § 1335 And Fed. R. Civ. P. 22 filed by Citigroup Global Markets, Inc. (Dkt 25):

The motion of Defendant CitiGroup to dismiss all claims on behalf of the minor N.J.K. is GRANTED for lack of standing, but the motion to dismiss the claims of Defendant Tamara Kolodziej is DENIED without prejudice. Defendant CityGroup's challenge to venue is SUSTAINED; however, the matter is TRANSFERRED to the Western District of New York in lieu of dismissal.

Defendant CityGroup's alternative requests for enforcement of the arbitration agreement or for interpleader is left for the decision by the transferee court.

Date: March 20, 2008

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge